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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,334	12/22/2003	Horst Eckert	056982/00038	5578

7590

03/03/2006

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EXAMINER

BURCH, MELODY M

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/743,334	ECKERT ET AL.	
	Examiner	Art Unit	
	Melody M. Burch	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-29 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application is in condition for allowance except for the following formal matters:

- The reference to “Fig. 1” in line 1 of paragraph [0023] should be deleted since figure 1 in the drawings has been amended to “Fig. 1a” and figures 1b and 1c have been added;
- The phrase “As will be appreciated by those of ordinary skill in the art, the vehicle EBS control unit 10 (see Fig. 9) has the capability to effect such filtering.” In line 2-4 of paragraph [0032.1] should be deleted since it introduces new matter. The originally filed disclosure fails to provide support for such specific filtering detail;
- Figure 9 should be deleted since it is not supported by the original disclosure;
- The axle load sensors recited in claim 17 must be shown once figure 9 is deleted;
- The means for determining a set deceleration value, means for measuring actual deceleration, and means for comparing the set and actual deceleration values as recited in claim 28 must be shown once figure 9 is deleted;
- The sheet containing new figures 1b and 1c as well as figure 9 (if maintained) should be amended to delete “Annotated Marked-up Drawing Sheet” in the upper right-hand corner and replaced by the

phrase "New Sheet" pursuant to 37 CFR 1.121(d). The phrase "New Figure Added" at the lower right corner should be removed;

- The floating, unlabeled numbers in figures 3a-3e, 4a-4c, 5a-5i, 6a-6e, and 7a-7e should be labeled or deleted. Applicant previously argued in the 5/9/05 response that "the position of each number in the various arrays of numbers set forth in the drawings below the depictions of the tractor-trailer vehicle indicates the value for which each number stands." Despite Applicant's contention that the position of the numbers is an acceptable way of indicating what the numbers represent, Applicant has provided labels for some of the numbers in some of the drawings to indicate what the numbers represent. Applicant's actions suggest (and Examiner agrees) that the mere position of the numbers with respect to the tractor-trailer vehicle does not clearly set forth what the reference numerals represent. Therefore, the numbers must be labeled or arranged in chart/table form with clearly labeled rows and columns or must be deleted.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Allowable Subject Matter

2. Claims 1-29 are allowed.

Response to Arguments

3. Applicant's arguments, see pg. 16, 18, and 19-23, filed 12/13/05, with respect to the new matter objections of figures 1b, 1c, the "affine equation" description, and the 103 rejections, respectively, have been fully considered and are persuasive. The new matter objections and 103 rejections have been withdrawn.

With regards to figures 1b and 1c, the originally filed disclosure provides support for the additions since KAPPA is described in step J2 as the "Brake-pressure level" but is also described in paragraph [0044], for example, as the brake-application energy reference value. Examiner also notes that figure 1c satisfies the illustration of the step of filtering the brake-application energy reference value as recited in claim 24. Pages 18-19 provide proof of the support for the "affine equations" statement. With regards to the 103 rejections, Examiner agrees that the particular method steps involving the calculation of the set brake application energy value for the tractor vehicle are not taught by the prior art of record.

4. Applicant's arguments filed 12/13/05 with respect to the new matter rejection of figure 9 have been fully considered but they are not persuasive.

With regards to the objection of figure 9, Applicant stated in the 12/13/05 remarks that the Examiner explained that "it is 'PTO policy' not to allow the addition of any drawings post filing." Examiner notes that Applicant clearly misunderstood the Examiner's statement. Examiner stated that is PTO policy not to allow the addition of unsupported drawings on amendment. "In the examination of an application following

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amendment thereof, the examiner must be on the alert to detect new matter.” “New matter includes not only the addition of wholly unsupported subject matter, but may also include adding specific percentages or compounds after a broader original disclosure.” See MPEP 706.03(o). Examiner was required to be on the alert to detect new matter with respect to figure 9 regardless of the fact that it was classified by Applicant as “Prior Art” or that Examiner gave a drawing objection requiring that claimed subject matter be shown. Applicant argues in the remarks on pg. 16 that “the elements shown in Fig. 9 are conventional and well known to those skilled in the art, in addition to having been recited in claims 17, 23, 24 and 28 as originally filed.” Examiner notes, however, that claims 17, 23, 24, 28 and the remaining portions of the originally filed disclosure fail to provide support for the signal transmitter for desired brake values, brake actuators, or wheel speed sensors as added in figure 9 and in paragraph [0077]. The MPEP states that the inclusion of “specific percentages or compounds after a broader original disclosure” constitutes new matter. Examiner considers the wheel speed sensors, for example, included in figure 9 after a broad original disclosure of a means for measuring actual deceleration to be comparable to the inclusion of “specific...compounds after a broader original disclosure.” Accordingly, the objection to figure 9 is maintained.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on 571-272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mmb
February 28, 2006

Melody M. Burch
Melody Burch
Primary Examiner
2/28/06